

# **MATZIKAMA MUNICIPALITY**



## **PREFERENTIAL PROCUREMENT POLICY**

**2020/2021**

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**PREFERENTIAL PROCUREMENT POLICY** adopted in terms of section 2 of the Preferential Procurement Policy Framework Act, No. 5 of 2000 and the Preferential Procurement Regulations, 2017

### PREAMBLE

**WHEREAS** the Matzikama Municipality aims to improve the quality of life of the local community and to free the potential of each person within a framework of facilitating service delivery, through effective governance and the Council takes into account the need for transparent procedures that give the effect to the principle of preferential procurement;

**AND WHEREAS** local economic development plays a crucial role in creating a prosperous, equitable, stable and democratic society and the overall national vision of economic development is one of decent work and living standards for all in the context of qualitative improved equality in ownership, skills and access to opportunities;

**NOW THEREFORE** the Council of the Matzikama Municipality resolves in terms of section 2 of the Preferential Procurement Policy Framework Act, No. 5 of 2000 that the principles embodied in the Preferential Procurement Regulations, 2017 are herewith integrated into the Matzikama Municipality's Supply Chain Management Policy to form the basis of the evaluation criteria for quotations and competitive tenders.

## Section 1: Definitions

In this Policy, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act must bear the meaning so assigned

**“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

**“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

**“black designated groups”** has the meaning assigned to it in the codes of good practice issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

**“black people”** has the meaning assigned to it in section 1 of the Broad-Based Black Economic Empowerment Act;

**“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

**“co-operative”** means a co-operative registered in terms of section 7 of the Cooperatives Act, 2005 (Act No. 14 of 2005);

**“designated group” means**

- (a) black designated groups;
- (b) black people;
- (c) women;
- (d) people with disabilities; or
- (e) small enterprises, as defined in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996);

**“designated sector”** means a sector, sub-sector or industry or product designated in terms of regulation 8(1)(a);

**“EME”** means an exempted micro enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

**“functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents;

**“military veteran”** has the meaning assigned to it in section 1 of the Military Veterans Act, 2011 (Act No. 18 of 2011);

**“National Treasury”** has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

**“people with disabilities”** has the meaning assigned to it in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998);

**“price”** includes all applicable taxes less all unconditional discounts; **“proof of B-BBEE status level of contributor”** means

- (a) the B-BBEE status level certificate issued by an authorised body or person;
- (b) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or
- (c) any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act;

**“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

**“Rand value”** means the total estimated value of a contract in Rand, calculated at the time of the tender invitation;

**“rural area” means**

- (a) a sparsely populated area in which people farm or depend on natural resources, including villages and small towns that are dispersed through the area; or
- (b) an area including a large settlement which depends on migratory labour and remittances and government social grants for survival, and may have a traditional land tenure system;

**“stipulated minimum threshold”** means the minimum threshold stipulated in terms of regulation 8(1)(b);

**“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);

**“township”** means an urban living area that any time from the late 19th century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994;

**“treasury”** has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); and

**“youth”** has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008).

## Section 2: Application

These Regulations apply to organs of state as envisaged in the definition of organ of state in section 1 of the Act.

## Section 3: Identification of preference point system, designated sector, pre-qualification criteria, objective criteria and subcontracting

1. The Municipality must-
  - a) determine and stipulate in the tender documents-
    - i) the preference point system applicable to the tender as envisaged below; or
    - ii) if it is unclear which preference point system will be applicable, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system;
  - b) determine whether pre-qualification criteria are applicable to the tender as envisaged in clause 4;
  - c) determine whether the goods or services for which a tender is to be invited, are in a designated sector for local production and content as envisaged in clause 8;
  - d) determine whether compulsory subcontracting is applicable to the tender as envisaged in clause 9; and
  - e) determine whether objective criteria are applicable to the tender as envisaged below.

## Section 4: Pre-qualification criteria for preferential procurement

1. If the Municipality decides to apply pre-qualifying criteria to advance certain designated groups, then the tender must be advertised with a specific tendering condition that only one or more of the following tenderers may respond-
  - a) a tenderer having a stipulated minimum B-BBEE status level of contributor;
  - b) an EME or QSE;
  - c) a tenderer subcontracting a minimum of 30% to-
    - i) an EME or QSE which is at least 51% owned by black people;
    - ii) an EME or QSE which is at least 51% owned by black people who are youth;
    - iii) an EME or QSE which is at least 51% owned by black people who are women;
    - iv) an EME or QSE which is at least 51% owned by black people with disabilities;
    - v) an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
    - vi) a cooperative which is at least 51% owned by black people;
    - vii) an EME or QSE which is at least 51% owned by black people who are military veterans
    - viii) an EME or QSE.
2. A tender that fails to meet any pre-qualifying criteria stipulated in the tender documents is an unacceptable tender.

## Section 5: Tenders to be evaluated on functionality

1. The Municipality must indicate in the tender documents if the tender will be evaluated on functionality;
2. The evaluation criteria for measuring functionality must be objective.

3. The tender documents must specify-
  - a) evaluation criteria for measuring functionality;
  - b) the points for each criteria and, if any, each sub-criterion; and
  - c) minimum qualifying score for functionality,
4. The minimum qualifying score for functionality for a tender to be considered further-
  - d) must be determined separately for each tender; and
  - e) may not be so-
    - i) low that it may jeopardise the quality of the required goods or services; or
    - ii) high that it is unreasonably restrictive.
5. Points scored for functionality must be rounded off to the nearest two decimal places.
6. A tender that fails to obtain the minimum qualifying score for functionality as indicated in the tender documents is not an acceptable tender.
7. Each tender that obtained the minimum qualifying score for functionality must be evaluated further in terms of price and the preference point system and any objective criteria envisaged below.

## Section 6: 80/20 preference point system for acquisition of goods or services for Rand value equal to or above R30 000 and up to R50 million

1. The following formula must be used to calculate the points out of 80 for price in respect of a tender (including price quotations) with a Rand value equal to, or above R 30 000 and up to a Rand value of R50 million inclusive of all applicable taxes:

$$Ps = 80 \left( 1 - \frac{(Pt - Pmin)}{Pmin} \right)$$

Where;

*Ps* = Points scored for price of tender under consideration;

*Pt* = Price of tender under consideration; and

*Pmin* = Price of lowest acceptable tender.

2. The following table must be used to calculate the score out of 20 for BBBEE:

B-BBEE Status Level of Contributor	Number of Points
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

3. A tenderer must submit proof of its B-BBEE status level of contributor.
4. A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE may not be disqualified, but-
  - a) may only score points out of 80 for price; and
  - b) scores 0 points out of 20 for B-BBEE.
5. A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.
6. The points scored by a tenderer for B-BBEE in terms of sub-clause (2) must be added to the points scored for price under sub-clause (1).
7. The points scored must be rounded off to the nearest two decimal places.

8. Subject to sub-clause (9) and clause 11, the contract must be awarded to the tenderer scoring the highest points.
9. If the price offered by a tenderer scoring the highest points is not market-related, the Municipality may not award the contract to that tenderer.
  - a) The Municipality may-
    - i) negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
    - ii) if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
    - iii) if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.
  - b) If a market-related price is not agreed as envisaged in paragraph (a)(iii), the Municipality must cancel the tender.

## Section 7: 90/10 preference point system for acquisition of goods or services for Rand value above R50 million.

1. The following formula must be used to calculate the points out of 90 for price in respect of a tender with a Rand value above R50 million, inclusive of all applicable taxes:

$$a) P_s = 90 \left( 1 - \frac{(P_t - P_{min})}{P_{min}} \right)$$

Where

$P_s$  = Points scored for price of tender under consideration;  
 $P_t$  = Price of tender under consideration; and  
 $P_{min}$  = Price of lowest acceptable tender

2. The following table must be used to calculate the score out of 10 for BBEE:

B-BBEE Status Level of Contributor	Number of Points
1	10
2	9
3	6
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	0

3. A tenderer must submit proof of its B-BBEE status level of contributor.
4. A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE may not be disqualified, but-
  - a) may only score points out of 90 for price; and
  - b) scores 0 points out of 10 for B-BBEE.
5. A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.
6. The points scored by a tenderer for B-BBEE in terms of sub-clause (2) must be added to the points scored for price under sub-clause (1).
7. The points scored must be rounded off to the nearest two decimal places.
8. Subject to sub-clause (9) and clause 11, the contract must be awarded to the tenderer scoring the highest points.
9. If the price offered by a tenderer scoring the highest points is not market-related, the Municipality may not award the contract to that tenderer.
  - a) The Municipality may-

- i) negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
  - ii) if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
  - iii) if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.
- b) If a market-related price is not agreed as envisaged in paragraph (a)(iii), the Municipality must cancel the tender.

## Section 8: Local Production and Content

1. The Department of Trade and Industry may, in consultation with the National Treasury-
  - a) designate a sector, sub-sector or industry or product in accordance with national development and industrial policies for local production and content, where only locally produced services or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content, taking into account economic and other relevant factors; and
  - b) stipulate a minimum threshold for local production and content.
2. The Municipality must, in the case of a designated sector, advertise the invitation to tender with a specific condition that only locally produced goods or locally manufactured goods, meeting the stipulated minimum threshold for local production and content, will be considered.
3. The National Treasury must inform organs of state of any designation made in terms of regulation 8(1) through a circular.
- 4a. If there is no designated sector, the Municipality may include, as a specific condition of the tender, that only locally produced services or goods or locally manufactured goods with a stipulated mini-mum threshold for local production and content, will be considered.
- 4b. The threshold referred to in paragraph (a) must be in accordance with the standards determined by the Department of Trade and Industry in consultation with the National Treasury.
5. A tender that fails to meet the minimum stipulated threshold for local production and content is an unacceptable tender.

## Section 9: Subcontracting as a condition of tender

1. If feasible to subcontract for a contract above R30 million, the Municipality must apply subcontracting to advance designated groups.
2. If the Municipality applies subcontracting as contemplated in sub-clause (1), the Municipality must advertise the tender with a specific tendering condition that the successful tenderer must subcontract a minimum of 30% of the value of the contract to-
  - a) an EME or QSE;
  - b) an EME or QSE which is at least 51% owned by black people;
  - c) an EME or QSE which is at least 51% owned by black people who are youth;
  - d) an EME or QSE which is at least 51% owned by black people who are women;
  - e) an EME or QSE which is at least 51% owned by black people with disabilities;
  - f) an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
  - g) a cooperative which is at least 51% owned by black people;
  - h) an EME or QSE which is at least 51% owned by black people who are military veterans
  - i) more than one of the categories referred to in sub-clauses (a) to (h).
3. The Municipality must make available the list of all suppliers registered on a database approved by the National Treasury to provide the required goods or services in respect of the applicable designated groups mentioned in sub-clause (2) from which the tenderer must select a supplier.

## Section 10: Criteria for breaking deadlock in scoring

1. If two or more tenderers score an equal total number of points, the contract must be awarded to the tenderer that scored the highest points for B-BBEE.



2. If functionality is part of the evaluation process and two or more tenderers score equal total points and equal preference points for B-BBEE, the contract must be awarded to the tenderer that scored the highest points for functionality.
3. If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.

## Section 11: Award of contracts to tenderers not scoring highest points

1. A contract may be awarded to a tenderer that did not score the highest points only in accordance with section 2(1)(f) of the Act.
2. If an organ of state intends to apply objective criteria in terms of section 2(1)(f) of the Act, the organ of state must stipulate the objective criteria in the tender documents.

## Section 12: Subcontracting after award of tender

1. A person awarded a contract may only enter into a subcontracting arrangement with the approval of the organ of state.
2. A person awarded a contract in relation to a designated sector, may not subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
3. A person awarded a contract may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

## Section 13: Cancellation of tender

1. The Municipality may, before the award of a tender, cancel a tender invitation if-
  - a) due to changed circumstances, there is no longer a need for the goods or services specified in the invitation;
  - b) funds are no longer available to cover the total envisaged expenditure;
  - c) no acceptable tender is received; or
  - d) there is a material irregularity in the tender process.
2. The decision to cancel a tender invitation in terms of sub-clause (1) must be published in the same manner in which the original tender invitation was advertised.
3. The Municipality may only with the prior approval of the relevant treasury cancel a tender invitation for the second time.

## Section 14: Remedies

1. Upon detecting that a tenderer submitted false information regarding its B-BBEE status level of contributor, local production and content, or any other matter required in terms of this policy which will affect or has affected the evaluation of a tender, or where a tenderer has failed to declare any subcontracting arrangements, the Municipality must-
  - e) inform the tenderer accordingly;
  - f) give the tenderer an opportunity to make representations within 14 days as to why-
    - i) the tender submitted should not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part;
    - ii) if the successful tenderer subcontracted a portion of the tender to another person without disclosing it, the tenderer should not be penalised up to 10 percent of the value of the contract; and
    - iii) the tenderer should not be restricted by the National Treasury from conducting any business for a period not exceeding 10 years with any organ of state; and
  - c) if it concludes, after considering the representations referred to in sub-clause (1)(b), that-
    - i) such false information was submitted by the tenderer-
      - a) disqualify the tenderer or terminate the contract in whole or in part; and
      - b) if applicable, claim damages from the tenderer; or



- ii) the successful tenderer subcontracted a portion of the tender to another person without disclosing, penalise the tenderer up to 10 percent of the value of the contract.

2a. The Municipality must-

- i) inform the National Treasury, in writing, of any actions taken in terms of sub-clause (1);
- ii) provide written submissions as to whether the tenderer should be restricted from conducting business with any organ of state; and
- iii) submit written representations from the tenderer as to why that tenderer should not be restricted from conducting business with any organ of state.

2b. The National Treasury may request the Municipality to submit further information pertaining to sub-clause (1) within a specified period.

3. The National Treasury must-

- a) after considering the representations of the tenderer and any other relevant information, decide whether to restrict the tenderer from doing business with any organ of state for a period not exceeding 10 years; and
- b) maintain and publish on its official website a list of restricted suppliers.

## Section 15: Circulars and guidelines

1. The National Treasury may issue-

- a) a circular to inform organs of state of any matter pertaining to this policy; or
- b) a guideline to assist organs of state with the implementation of any provision of this policy.

## Section 16: Short title and commencement

This part of the policy is called the Preferential Procurement Policy of the Matzikama Municipality. This policy will come into effect on 1 July 2017 and will be reviewed at least annually by way of a Council resolution.